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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE: B-200002**

**DATE: April 2, 1982**

**MATTER OF: Aletha B. Bowie and Melinda Zarriello -  
Backpay for overlong detail - Interpreting  
provisions of a negotiated agreement**

**DIGEST:**

1. Employees claim retroactive temporary promotion and backpay for overlong details to duties in experimental unit which were same duties performed by other employees classified at higher grade elsewhere in agency. Claims are disallowed because to qualify for backpay, detail must be to established classified higher grade position. Fact that similar positions were classified at a higher grade in other components of the agency does not provide basis for retroactive temporary promotion with backpay.
2. Agency's inquiry as to whether provisions of a negotiated agreement may be retroactively applied presents question requiring interpretation of a collective bargaining agreement which is more appropriately resolved under the provisions of 5 U.S.C. §§ 7101-7135, the Federal Service Labor-Management Relations Statute.

The first issue in this case involves entitlement to retroactive temporary promotions with backpay for overlong details to perform duties in a experimental unit which were the same duties performed by other employees in other units classified at higher grades. We find that there is no entitlement to backpay since the positions to which the claimants were detailed were not yet officially classified. The second issue is the extent to which this Office will interpret and apply provisions of collective bargaining agreements. That issue is discussed below.

In this decision we are considering the claims of Ms. Aletha B. Bowie and Ms. Melinda Zarriello for retroactive temporary promotions and backpay in connection with alleged overlong details to higher grade positions as

employees of the Social Security Administration, Department of Health, Education, and Welfare (now Department of Health and Human Services). The backpay claims were filed by Local 1923, American Federation of Government Employees (AFGE) pursuant to 4 C.F.R. Part 31 and are based on two successive collective bargaining agreements between the Social Security Administration Headquarters Bureaus and Offices in Baltimore, Maryland, and AFGE Local 1923.

#### BACKGROUND

In October 1976, the Bureau of Disability Insurance set up an experimental modular unit to process disability claims. Both Ms. Bowie and Ms. Zarriello applied for and were selected to perform duties within the experimental unit. The duties they performed in the new unit were essentially the same as the duties of established and classified positions in other organizational components of the Bureau. However, due to the experimental nature of the modular unit, there were no established classified positions covering those duties within the unit, and those individuals detailed to the unit retained their permanently assigned official positions.

In September 1977, Ms. Bowie filed a grievance under the negotiated agreement seeking backpay alleging she was performing the higher graded duties of a Claims Folder Clerk (typing) GS-301-4 although her official position was that of a Clerk-Typist, GS-3. Similarly, in August 1977, Ms. Zarriello filed a grievance requesting backpay alleging she was performing the higher graded duties of a GS-4 Blocker-Coder while her official position was that of a GS-3 Control Clerk.

The agency decision at the third step of the grievance procedure denied the grievances on the grounds that the claimants performed duties on assignment to a function and not under a detail to established classified positions. The claimants, through their authorized representative, AFGE Local 1923, filed timely claims with our Claims Group under 4 C.F.R. Part 31.

#### THE AGENCY'S POSITION

The agency has not objected to the union's submission of this matter to GAO. Accordingly, although grievances

on the same claims were filed under the negotiated agreement, this submission is considered a joint submission for purposes of 4 C.F.R. Part 31, and is appropriate for consideration by GAO. Linda A. Vaccariello, B-199998, February 26, 1982. Compare, Schoen and Dadant, B-199999, October 9, 1981, 61 Comp. Gen. \_\_\_\_\_, where we held that where a claimant has filed a grievance under the negotiated agreement, this Office will not assert jurisdiction if a party to the negotiated agreement objects since to do so would be disruptive to the grievance procedures authorized by the Federal Service Labor-Management Relations Statute, 5 U.S.C. §§ 7101-7135 (Title VII, Civil Service Reform Act of 1978, Pub. L. 95-454 October 13, 1978).

With regard to the merits of the claims, the agency takes the same position it took at the third step of the grievance procedure. The agency maintains that, since there were no positions classified at the higher level in the experimental unit, there was no entitlement to backpay because one cannot be promoted to a position which has not been classified.

The agency has also asked this Office to provide guidance as to what weight we will give to the parties application and interpretation of the collective bargaining agreement. Specifically, the parties to the negotiated agreement had a policy of retroactively applying the overlong detail provisions of the 1977 agreement to overlong details which overlapped the effective dates of the 1974 and 1977 agreements.

For example, the detail of Ms. Bowie began on October 28, 1976, during the term of the 1974 agreement. The detail continued, however, until June 9, 1978, ending during the term of the negotiated agreement effective September 15, 1977. In such instances, it was the policy of the parties to the agreement to provide the remedy prescribed by the later agreement. Since the 1974 agreement, as interpreted by the parties, provided for backpay only from the 31st day of an overlong detail, and the 1977 agreement provided for backpay from the first day of details which exceed 30 days, the policy of providing the remedy prescribed by the later agreement would result in the payment of an additional 30 days of backpay.

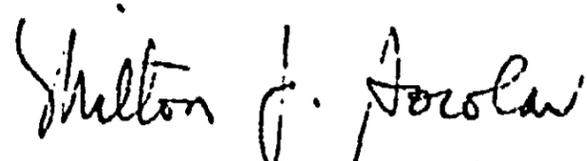
Although the agency has denied the claims of Ms. Bowie and Ms. Zarriello on other grounds, it has raised this issue since many other claims and grievances have been filed based upon details which overlap two successive negotiated agreements.

DISCUSSION AND CONCLUSION

The second issue raised in this case concerns the policy of the parties of retroactively applying the over-long detail provisions of the 1977 collective bargaining agreement to details which overlap the effective dates of the 1974 and 1977 agreements. This issue is not appropriate for consideration by GAO. The issue of whether provisions of a negotiated agreement may be retroactively applied presents a question which requires the interpretation of the collective bargaining agreements. As a matter of policy, this Office will defer to labor-management procedures established by the Federal Service Labor-Management Relations Statute, 5 U.S.C. §§ 7101-7135, on such issues. Linda A. Vaccariello, supra.

With regard to the first issue of the merits of the employees' backpay claims, we concur in the agency's denial of backpay. It is well established that there is no authority to grant a retroactive temporary promotion to a position which has not yet been classified. Clem H. Gifford, B-193834, June 13, 1979; Helen Mansfield, B-192765, May 9, 1979, and cases cited therein. The fact that comparable positions in other components of the agency were classified at the higher level does not in itself create an entitlement to backpay. Jerry C. Oosting, B-190300, November 2, 1978.

Accordingly, the claims of Ms. Bowie and Ms. Zarriello are denied.

*for*   
Comptroller General  
of the United States